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OCT 23 2006

REMARKS

This Amendment is provided in response to the office action of April 21, 2006. Claims 1, 4-5, and 12-24 are currently pending with claims 5, 12 and 14-22 being presently withdrawn pending rejoinder. Claims 1, 4, 12-15, 17-18, and 24 are amended. Claims 1, 12, 15, and 18 are amended from "consisting essentially of" to "consisting" and allowance for pH adjustment of the culture medium added. Support for amendments to the claims is found throughout the specification, including original claims 4 and 5, as well as pages 3-4. Claims 4, 13-14, 15, 17, and 24 are amended to clarify basis for "culture medium" as recommended by the Examiner and to correct typographical errors.

The claim to foreign priority has been acknowledged.

The pending claims of the present application were previously subjected to restriction. The elected group is directed to media compositions. Withdrawn claims include claims 5 and 12 directed to methods of making the media compositions and claims 17-22 directed to a method of using the elected media compositions. Upon allowance of the claims to the media compositions, Applicants respectfully request rejoinder of withdrawn claims 5, 12, and 17-22 as being methods of making and methods of using respectively with limitations corresponding to that of the media composition claims.

Interview with Examiner Ware

A telephone interview request was granted by Examiner Ware. Examiner Ware, Supervisory Examiner Wityshyn and Applicant's Counsel Anne Murphy (Reg. No. 54,327) participated in the interview. The subject matter of the invention was discussed. Entry of an inventor declaration excluding yeast extract or other nitrogen sources from the media, or amendment of the claim language to closed form optionally including additional ingredients for pH modification were suggested to move the claims into allowable form.

35 U.S.C. § 112

Claims 4, 13, 15-16, and 24 are rejected as indefinite for lack of antecedent basis and improper dependency. These typographical errors are corrected by amendment.

35 U.S.C. § 103(a)

Claims 1, 4 and 13 were rejected under 35 U.S.C. § 103(a) as being unpatentable over JP 360196185A in view of Gottlieb (U.S. Patent No. 3,188,272), Chun (U.S. Patent No. 5,089,394) and Liao (U.S. Patent No. 4,437,997. Applicant respectfully traverses this rejection

In order to establish a prima facie case of obviousness, three basic criteria must be met, namely: 1) the references when combined must teach or suggest all of the claim limitations; 2) a suggestion or motivation to modify the references or combine the reference teachings must be present; and 3) the references when combined must provide a reasonable expectation of success. Applicants submit that all of these requirements have not been met.

The claims are directed to a minimal media consisting of monobasic potassium phosphate; ammonium chloride; heptahydrate magnesium sulfate; saccharose; and water, which may additionally include acid or base for pH adjustment, for culturing organisms such as fungi and/or yeast. The claimed media is contrasted with conventional medias. In particular, these conventional medias contain ingredients derived from other organisms, such as: yeast extract, digested casein, and/or peptone to supply necessary nutrients. See page 3 of the specification. Advantages of avoiding ingredients such as yeast extract generally include improved shelf life and reduced cost. See pages 25-26. The claimed minimal media has been demonstrated to efficiently evaluate colony counts such as fungi and/or yeast contamination in food processing installations as compared with conventional medias.

JP 360196185A discloses a semi-synthetic culture medium for yeast, which includes ammonium chloride, magnesium sulfate, saccharose, and yeast essence. Therefore, JP 360196185A does not disclose the fully synthetic minimal media of the present invention which does not include non-synthetic ingredients such as yeast extract (i.e. yeast essence). Gottlieb, Chun and Liao fail to cure the deficiencies of JP 360196185A. Gottlieb, Chun and Liao disclose various conventional medias containing one or more of yeast extract, peptone, beef extract, soybean meal, Brewer's yeast, etc.... JP 360196185A and Gottlieb and Chun and Liao, either alone or in combination, do not teach the claimed culture media consisting of monobasic potassium phosphate, ammonium chloride, heptahydrate magnesium sulfate, saccharose, and

water. Therefore, the combination of JP 360196185A and Gottlieb and Chun and Liao fails to teach or suggest the invention of claim 1.

A prima facie case of obviousness further requires some suggestion or motivation to combine the references. See MPEP § 2143. The combination of the teachings of JP 360196185A with Gottlieb, Chun, and Liao would require selective reconstruction in order to arrive at the claimed media. None of the references provide any guidance for selection of only particular disclosed ingredients and exclusion of other ingredients, such as yeast extract. Furthermore, there is no teaching in any of the references cited that would suggest that omission ingredients providing large quantities of nutrients, include nitrogen source, such as yeast extract, peptone, or Brewer's yeast, could be excluded from the medias taught by JP 360196185A and Gottlieb, and Chun and Liao but still result in a functional media.

For at least these reasons, the combination of JP 360196185A with Gottlieb, Chun and Liao fails to render claim 1 obvious. As claims 4, 13-16 and 24 are dependent on claim 1, they are also not rendered obvious. Applicant respectfully requests that this rejection be withdrawn. Applicants also respectfully request rejoinder of the corresponding withdrawn method of making and method of use claims.

Summary

In view of the above amendments and remarks, Applicant respectfully requests a Notice of Allowance. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.



23 October 2006
Date

BHB:AMM

Respectfully submitted,

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